IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 502 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL NARANBHAI PARSOTTAMBHAI

Versus

STATE OF GUJARAT

Appearance:

MR PREMAL DAVE for MR KB ANANDJIWALA for Petitioner

MR ND GOHIL, APP, for Respondent

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 15/12/2000

ORAL JUDGEMENT

1. This is an appeal filed by the original accused against the judgement and order dated 18/6/1990 passed by the Special Judge, Mehsana convicting the appellant for the offence under section-5(1) of the Prevention of

Corruption Act and sentencing him to undergo simple imprisonment for six months and a fine of Rs.1000/- and otherwise simple imprisonment for one year in case the fine is not paid.

2. On behalf of the appellant, the following contentions have been raised for assailing the conviction of the appellant for the alleged offence :

a) That there is no independent corroboration that the accused appellant had made any initial demand on 13/2/1984 except the say of the complainant.

b) That the presence of the accused at the time of so called initial demand on 13/2/1984 is not established in view of the fact that according to the complainant's own version, the demand had been made at 6.00 p.m., namely, beyond office hours.

c) The prosecution has failed to examine the material witness, namely Mehboobkhan, the peon of the office wherein the accused was working, who was stated to be present at the point of time when the initial demand was made by the accused.

d) That even at the point of time when the alleged incident of accepting illegal gratification is stated to have taken place, namely, on 17th February, 1984, in the office of the accused, it has not been shown that there was any conversation, any talk or any discussion regarding the work to be carried out by the accused for the purpose of which such illegal gratification was sought for and hence, no demand is shown to have been made even on the day and at the time of alleged incident.

e) The case of the original defendant that though no demand was made, he was falsely implicated, becomes apparent from the fact that force was used against the accused which is borne out from the medical evidence and damage to the shirt of the accused.

f) That the marks of anthracene powder on the hands/finger tips of the accused are as a result of resisting the thrusting of marked currency notes and the resultant grappling with the complainant which took place at the time of the incident.

3. As against these contentions raised on behalf of the appellant - accused, the following points have been made out on behalf of the State :

a) that the acceptance of illegal gratification has been shown to have taken place i.e demand was made by way of hand signals and even, in absence of any verbal communication, it should be enough to establish the case of the prosecution;

b) that the presence of the accused on the day of the incident in his office is not only proved, but not even denied by the accused;

c) that it is the say of the accused himself that the complainant has no enemity against the accused, and thus, it was urged that there can't be a case of false implication in such circumstances and;

d) that trace of powder marks was found in the hands/finger tips as well as pocket of the shirt of the accused along with the marked currency notes which was enough to establish the complicity of the accused in the incident.

4. For the purpose of appreciating the rival contentions, it is necessary to appreciate the evidence. Before entering into appreciation of evidence, a brief resume of undisputed facts may be undertaken. On 13/2/1984, it is stated that the complainant, Inayatkhan, went to the Office of City Survey in Kadi town for giving an application for measurement of the property, namely, land in between his house and the house of his neighbour, one Faridkhan. The accused was discharging his duties as a Surveyor in the City Survey Office at Kadi and when the application was presented by Inayatkhan, he was told that as per the rules, measurement can be undertaken only if the application is accompanied by a xerox copy of Sanad and Property Card. The complainant, accordingly, obtained necessary copies for attaching with the application for measurement and presented the application once again before the accused along with necessary fees of Rs. 25/- on 13/2/1984 at around 6.00 p.m. The complainant has stated further that the accused informed him that in case he wanted the measurement to be undertaken immediately, an additional sum of Rs.35/- will have to be paid and that in case, he wanted the measurement to be carried out immediately on the same day, he will not be given receipt of fees of Rs.25/- paid

by him. It is further the say of the complainant that the accused told him that in case receipt was desired of the fees of Rs.25/- paid by him, the measurement work will be undertaken only as per turn after about 2 to 3 months and therefore, the complainant did not insist for the receipt. However, as the complainant did not have the additional sum of Rs.35/- available with him on 13/2/1984, he informed the accused that the additional sum would be paid to him within 2 to 3 days. The complainant once again went on 16/2/1984 for requesting the accused to undertake the work of measurement urgently and even at that time, it is stated that the accused demanded Rs.35/- and told him that "I will undertake the measurement work as and when you come with Rs.35/-".

5. It is the say of the complainant that, it is because of these facts and circumstances, he approached the Anti Corruption Bureau Office at Mehsana and a trap was laid. The say of the prosecution is that the accused was accordingly trapped and as a consequence, he was chargesheeted by the police. On being asked by the Special Judge, the accused denied the charges framed against him and stated to be tried for the alleged offence. It is in backdrop of these facts that the accused was tried and held guilty and convicted for the offence for which he was chargesheeted.

6. On 12/8/1986, statement of the accused was recorded and some of the salient features of his deposition are as under :

That on 17/2/1984, at around 9.30 a.m., in the morning, when the accused was discharging official duties in his Office, the complainant accompanied by one another person had come to the Office of the accused. That the accused informed his Peon that as they had to go for review work, he should make preparations for that and be ready. The accused informed the complainant that the said day was not the day notified for measurement and hence, it was not possible to undertake the work of measurement on the said day. That thereafter, the accused stood up and went out of his chamber to the common passage to ascertain as to whether the Peon was ready or not and it is at that point of time that the complainant followed the accused and told him to take the money and carry out the measurement work on that day itself and that the complainant tried to forcefully place the money in the pocket of shirt of the accused. It is further say of the accused that at this juncture, he tried to resist the action of the complainant questioning the complainant as to what he is doing and hence, the

complainant caught hold of his shirt's collar and while resisting, some grappling took place between the accused and the complainant and at that point of time, his shirt was torn from the shoulder as well as the shirt's pocket was torn. That at that point of time, two policemen arrived and they caught hold of the accused, abused and slapped him twice. That while the policemen were holding the hands of the accused, the complainant placed marked currency notes in the upper pocket of the shirt of the accused and he was taken to his chamber. It is further stated that one official arrived there and the accused complained that the police constables had abused and slapped him and that he was hurt on the ears; that the complainant had forcefully placed the currency notes in his pocket and tore off his shirt. It is further stated that the police officer, at that point of time, did not take into consideration the complaint of the accused, but, after sometime when the accused complained of pain in his ears, he was sent to the Government Hospital. It is further stated by the accused that though he has no enemity with the complainant, the complainant seems to have arranged the trap at the instance of someone else.

7. The deposition in chief of the complainant is at Exh. 25. On behalf of the appellant, I was taken through the said deposition closely for the purposes of showing the flaws in the case of the prosecution. In the cross examination, it is specifically brought out that the working hours of the City Survey Office are 9.00 a.m. to 12.00 noon and 1.30 p.m. to 5.30 p.m. and that the work of measurement is undertaken on every Tuesday only. The complainant has admitted that he was not aware of the office hours and the schedule for measurement work. In this context, on behalf of the appellant, it is stated that the complainant's version that he met the accused at 6.00 p.m. on 13/2/1984 in his office cannot be acceptable in view of the fact that the accused is normally not likely to be present beyond office hours. It is further pointed out that the complainant has stated that the office Peon-Mohammadbhai, who is also resident of Kadi, knows the complainant, Inayatkhan, and that the said Peon was present on the said day i.e. on 13th February, 1984 at around 6.00 p.m. in the office of the accused and that it was in his presence that the demand of Rs.35/towards illegal gratification was made by the accused. Relying on this part of the deposition, it was pointed out that if the complainant's version that the Peon Mohammadbhai was present at the time and day of alleged incident, it is very strange as to why he has not been placed in the witness box as he would be the best person to support the case of the prosecution about the

demand for bribe having been made by the accused. It is further pointed out from the cross examination of the complainant that on 17/2/1984, the accused had not demanded bribe money by any verbal communication, but, only by way of signals made by hand. It is further pointed out that the version of the complainant is that the accused had caught hold of his shirt between his teeth because his hands were held by the police constables and the accused himself had torn off the shirt by pulling with his teeth. The complainant has further stated that buttons of the shirt of accused were broken, the portion below the left hand side shoulder and the pocket were also torn and that this was torn by the accused by using his teeth.

8. On the basis of this version of the complainant, it was contended that tearing of shirt and pocket as well as breaking of the buttons in such a manner was not possible, even assuming that one could catch hold of the shirt in the teeth when one's hands are held by someone else.

9. In this context, on behalf of the appellant, the deposition of Prosecution Witness, namely, Tulsibhai Virabhai at Exh.32 was also extensively read in support of the case that the story put forward by the prosecution was not only not plausible, but, it was not even supported by its own witness. The witness, Tulsibhai, deposed that muddamal article no.5 is the same shirt which was seized and he further stated that the shirt which has been torn in the portion between left hand side collar and sleeve could not have been torn by holding between the teeth and similarly, the portion of the pocket which is torn off also could not have been torn by holding between the teeth. The Prosecution Witness has further stated that if the police constables had held the hands of the accused, it was not possible for the accused to hold the shirt with his teeth and tear of the portions which are shown to have been torn.

10. Exh.48 which is the certificate issued by the medical officer was also relied upon to show that the accused had been taken to the Municipal General Hospital at Kadi on 17/2/1984 at around 11.45 a.m. and on examination, though there was no external injury visible, yet there was tenderness on both the ears. In the said certificate, it is further recorded that the accused had stated before the medical officer that he was assaulted by constables with slaps at 10.00 a.m. The opinion of the medical officer further states that the injury in question could have been caused by hard blunt object. On

the basis of this certificate, it was contended that the fact that the accused was slapped by police constables stood established and as a result, the say of the accused that force was used against him for falsely implicating him was also at least probable, if not proved beyond doubt.

11. Taking me to the impugned judgement of the Trial Court, it was contended on behalf of the appellant that while appreciating the depositions of the accused as well as the complainant, some of the relevant portions of those depositions, as have already been referred to hereinbefore, have been ignored by the Trial Court, resulting in miscarriage of justice. That for most part of the impugned judgement, the Trial Court has, after narrating the partial evidence, drawn inferences which are not only not supported by evidence on record, but, are in fact, after ignoring the relevant material on record and hence, such inferences, and the final conclusion based on such inferences, stand vitiated.

12. I have gone through the entire evidence on record and after hearing both the sides, I feel that the impugned judgement and order cannot be sustained. The case put forward by the defendant-appellant is at least probable and on the other hand, the prosecution has not been able to prove its case beyond reasonable doubt. That is to say, on appreciation of the relevant depositions and evidence on record, it is not possible to state with certainty that the case against the accused-appellant could be the only version as put forward by the prosecution and no other case. In such circumstances, when there are two probable versions, the benefit of doubt must go to the accused. The factors which have been highlighted and pointed out by the counsel for the appellant, if taken into consideration singularly, may not play decisive role; however, when all of them are considered cumulatively, the effect is that they assume significance and once significant relevant evidence is ignored, it is not possible to state to what extent the mind of the Trial Court was vitiated, and in such circumstances, the accused cannot be convicted of the alleged offence.

13. The appeal is, accordingly, allowed and the judgement and order dated 18/6/1990 is hereby quashed and set aside. As a consequence, the sentence of imprisonment and fine imposed on the accused stands quashed and it is directed that the accused be acquitted of the offence charged and he be refunded the fine

already paid by him.

[D.A. Mehta, J.]
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